

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

J U D G M E N T

THE STATE OF RAJASTHAN. V. BHOJRAJ SINGH AND
OTHERS.

D. B. CRIMINAL APPEAL NO.417/83

Under Section 378 (3), Cr.P.C., against
the Judgment dated 09.03.1983,
passed by Mr.U.S.Bhargava, RHJS, the
learned Additional Sessions Judge,
Udaipur, in Sessions Case
No.25/82.

DATE OF JUDGMENT :::: 30-08-2007

PRESENT

HON'BLE MR. JUSTICE BHAGWATI PRASAD

HON'BLE MR. JUSTICE MUNISHWAR NATH BHANDARI

Mr. J.P.S.Choudhary, Public Prosecutor.
Mr. Sandeep Mehta, for Respondents.

BY THE COURT: (PER HON'BLE MR. BHANDARI, J.):--

Aggrieved by the judgment dated 09.03.1983, passed by
the learned Additional Sessions Judge, Udaipur, in Sessions Case

No.20/82, State has preferred this appeal.

The facts giving rise to the present case are that Durga Shanker lodged FIR in Police Station, Sayra, at about 1.30 a.m., on 20th December, 1981. It was stated therein that in the mid night of 19th and 20th of December, 1982, while he was sleeping, heard loud noise from Heera Lal's house at 12 O' clock. When he tried to come out from his house, it was found to be closed from outside. The door was opened by the village people and, thereafter, when he tried to enter in the house of Heera Lal, then, the same was found locked from inside. Immediately thereafter, he went back portion of Heera Lal's house, during that process, he was fired by robbers and in return, he threw stones on them. He had seen back side eight persons, while they were returning. It was dark night. He went in the Heera Lal's house, where on the roof, dead body of Heera Lal was lying. Lakhu Bai, Chandra Bai and Dhapu Bai informed that their ornaments were snatched and Heera Lal was killed by the robbers. The FIR was registered in the Police Station, being No.457/89.

After registration of FIR, against eight unknown persons police conducted usual investigation and filed challan against the accused persons under Section 396 of IPC before the Munsif and Judicial Magistrate, Gogunda, from where, the case was committed to the Court of Sessions Judge, Udaipur, from where,

the case was transferred to the trial Court. The trial Court framed charges against the accused vide order dated 28th April, 1982. The charge was framed under Section 396 of IPC. Accused denied charge and claimed trial.

The prosecution produced 22 witnesses and exhibited 35 documents in evidence, whereas statements of the accused were recorded under Section 313 of Cr. P.C. No witness was produced in defence.

The learned trial Court acquitted all the accused as no case was found against them. Aggrieved by the order of acquittal of all the accused, the State has filed this appeal.

The learned Public Prosecutor urged that the order of acquittal of accused by the trial Court, is contrary to the evidence available on record. It was argued that the prosecution produced eye witnesses to prove their case and even all the articles were recovered at the instance of the accused, yet the trial Court acquitted all the accused. According to the learned counsel, the impugned judgment has been passed by the learned trial Court either by misreading of statements of all the witnesses or in ignorance of the material available on record. Therefore, it was prayed that the order of acquittal be set aside and all the accused be convicted under Section 396 of IPC and be sentenced accordingly.

Per contra, learned counsel appearing for the accused

respondents submitted that the prosecution could not prove their case as there was no eye witness of the occurrence, prosecution had created eye witnesses to prove their case in an artificial manner and the statements of those witnesses were found to be untrue and false by the trial Court. It was further submitted that even the prosecution managed identification parade in illegal manner and even recoveries of articles have been made in an artificial manner, therefore, trial Court had rightly acquitted the accused as nothing was found against them, hence it was prayed that the judgment of the trial Court should be maintained.

We have considered the rival submissions of the learned counsel for the parties and scanned the matter carefully.

The prosecution case was started with lodging of FIR by Durga Shanker, whose statement was recorded as PW 1. In his court statement, it was stated that he heard the noise of Dhapu Bai and Chandra Bai at around 12 O' clock in night. After hearing loud noise, he went to Heera Lal's residence, where door was found to be locked from inside. He immediately went in the back portion of the house, where it was found that 6 – 8 dacoits were focus torch on him and then fired. He immediately saved himself by taking shelter in the side and, thereafter, focused his torch on dacoits. He had seen all the dacoits coming down from roof of Heera Lal's house and going away from the place

through the village path. On the spot, Bhura Lal, Mohan Lal and Bhagwan Lal also came. Bhura Lal and Bhagwan Lal even went to the police station along with him. In identification parade, he had identified all the accused properly. In cross-examination, said witness stated that his house was locked from outside which was opened by the village people and thereupon it was specifically stated that his gate was opened by Jodh Raj. It was further stated that when he came out from his house, then Devi Lal was also coming out from his house. The witness admitted that he had seen those dacoits for the first time, who had covered their head by cloth, but their faces were visible. Said witness, however, denied suggestion given to the effect that before identification parade, he was shown all the accused.

PW 10 Bhagwan Lal had also stated that after hearing Chandra Bai's cry, he went in the back side of Heera Lal's house, where Durga Shanker and Mohan Lal were found standing. He had seen 6 – 7 persons on the roof of Heera Lal's house. When they threw stones, then fire was started from roof. They focused torch on the accused, then immediately, all the accused got down from the roof and went away towards village Sayra. Witness admitted that Durga Shanker was having a torch and said Durga Shanker opened the door of Heera Lal's house. The further statement of said witness says that three females stated that their jewellery has been robbed by the accused and

Heera Lal was killed by them. Witness Bhagwan Lal identified all the four accused. In cross-examination, said witness stated that Heera Lal's house is 35 steps away from his house and when he reached at the place of occurrence, then Devi Lal and Jodh Raj were not present and Bhura Lal came after he reached on the place of occurrence. Said witness also denied suggestion of seeing the accused before identification.

PW 11 Mohan Lal also stated that when he heard loud noise of ladies, then he came out from his house and went to the back side of Heera Lal's house, where Durga Shanker and Bhagwan Lal were found standing. Durga Shanker focused his torch on the dacoits and, in return, torch was focused by the accused on them. They were 7 – 8 accused, out of which five accused were identified. Durga Shanker had opened Heera Lal's main door and, thereby, Bhagwan Lal and Bhura Lal came inside. It was lastly stated that he identified accused and signed document Ex.P-8. In cross-examination, it was stated that when he reached in the back side of house of Heera Lal, then Durga Shanker, Bhagwan Lal and Bhura Lal were found standing and, at that time, accused were coming down from Heera Lal's house. Said witness denied that before identification, accused were shown to him by the Police.

PW 15 Lalu Ram stated that at the time of occurrence, he was on the roof of his own house and focused at Heera Lal's

house from his torch. One of them fired on him, but he cannot identify the said person. It was further stated by the witness that when he focused his torch again, then, 7 – 8 persons were found coming down from Heera Lal's house. He identified Bhoj Raj Singh and Suraj Pal in the identification parade. In the cross-examination, witness stated that Devi Lal and Seva Ram came on the scene of occurrence, after him. He had not seen Jodh Raj at Heera Lal's residence and it was further admitted that when he reached close to the dead body, then Durga Shanker, Bhagwan Lal, Bhura Lal and Mohan Lal were found standing near the dead body.

So far as the recoveries of articles are concerned, PW 6 Bir Bal Singh stated that he was a Cashier in the Firm M/s. Omprakash Maheshwari and ornament ("Bor") was sold to him by Pyare Lal for a sum of Rs.1575/-. The said "Bor" was, thereafter, recovered by the Police. In the cross-examination, Bir Bal Singh stated that on the day Pyare Lal sold the ornament, no other purchase and sale took place in the shop. It was further submitted that no transaction was recorded in the accounts book regarding purchase of "Bor". On that day, neither his owner, nor his son was present in the shop and the ornament was purchased by him alone as owner had given a lump sum amount to him. It was stated that he is not in the know of the fact as to whether any entry was made in the accounts books

regarding purchase of "Bor".

PW 20 Karan Singh stated that he recovered "Bor" on the information of accused Pyare Lal. In the cross-examination, he stated that owner of the shop from where "Bor" was recovered, stated that they have not made entry of purchase of "Bor" and he had not seen any accounts books. The suggestion for preparation of false recovery memo was, however, denied. PW 4 Chandra Bai identified "Bor".

PW 20 Karan Singh also stated that he had recovered even two silver bangles from the house from where the accused was arrested. In the cross-examination, said witness admitted that he had not entered in the house and arrest of accused and recovery of ornament was done at one instance, but recovery memos were prepared separately. Said witness further stated that at the instance of accused Bhoj Raj Singh, he had recovered one firearm ("Katta"), torch, one bag and cells which were sealed and recovery memos were prepared. In the cross-examination, said witness stated that he had not seen the face of accused, at whose instance recovery was made.

In the statement of PW 4 Chandra Bai, PW 12 Takhu Bai and PW 13 Daku Bai, it has come out that dacoits have taken away their ornament and killed Heera Lal. However, they do not identify those persons.

In the light of material referred, the trial Court came to the

conclusion that the prosecution could not prove case against the accused, for the reason that not only there are self contradictions in the statements of prosecution witnesses, but even the story taken up by the prosecution is unbelievable. The trial Court has taken note of fact that it was dark night when occurrence took place and if Durga Shanker flashed torch on dacoits then this fact should have been mentioned in the FIR. The trial Court has further taken note of fact that according to the statements of Chandra Bai, Dhapu Bai and Durga Shanker, informant came in their house, after dacoits went away. Thus, the statement of Durga Shanker becomes doubtful, because said witness stated that he reached on the scene of occurrence before dacoit ran away from the place. The learned trial Court has also taken note of the fact that as per the statements of witnesses, dacoits had covered their head by cloth, thus, in the dark night, it was difficult to identify them from a distance as all the witnesses were standing in the back side of portion of Heera Lal's house and accused were on the roof and, thereafter, ran away, in between, even fire arm was used.

The learned trial Court has also taken note of the fact that identification parade cannot be relied upon as PW 16 Babu Lal has stated that he was called by the Police for hair cutting of all the accused and, at that time, witnesses – Durga Shanker, Ladu Ram, Mohan Lal and Bhura Ram etc. were present. Thus, before

identification parade, the accused were shown to the witnesses, more so, when identification parade took place, after many days of arrest of the accused, as accused were arrested on 5.1.1982, whereas identification parade was held on 25.1.1982, therefore, learned trial Court came to the conclusion that it is not safe to take into consideration such identification parade.

The statement of Durga Shanker was also found to be false, in view of the fact that Durga Shanker denied his relationship with Heera Lal, whereas witness Chandra Bai admitted that Durga Shanker is brother of deceased Heera Lal. It was further noticed that as per the statement of Durga Shanker, Jodh Raj opened the door and when he came out, he had seen Devilal was present there. However, both the persons, namely, Jodh Raj and Devilal were not produced, despite of the fact that they reached near the scene of occurrence, prior to Durga Shanker. Further, in the complaint, Durga Shanker stated that he had seen accused back side while they were going back. Thus, it was impossible for the said witness to see and identify the accused. Similar contradictions were found in the statement of Bhagwan Lal, in which he has stated that when he reached to the scene of occurrence, Durga Shanker and Mohan Lal were found present, whereas witness Mohan Lal stated that when he reached on the scene of occurrence, then, Durga Shanker and Bhanwar Lal were found present. Thus, there is clear

contradiction in the statements of witnesses and all those contradictions were taken note of by the learned trial Court.

Even in regard to the recoveries of articles, the trial Court found self-contradiction in the statements of all the witnesses which was sufficient to show that the prosecution had created witnesses to substantiate their case. According to the statement of witness Bir Bal Singh, ornament "Bor" was recovered after seven months of its sale by accused Pyare Lal. Now, taking note of the fact that the occurrence took place on 20th December, 1981, whereas "Bor" was recovered on 5th January, 1982, then, in that case, date of occurrence does not match with the statement and there are other contradictions found by the trial Court in regard to the recovery of that article.

After considering the entire material available on record and the judgment of the learned trial Court, we are unable to agree with the arguments of the learned Public Prosecutor. The learned trial Court has recorded its finding based on material and conclusions drawn thereupon, cannot be said to be perverse. The argument of the learned Public Prosecutor that the trial Court has drawn conclusions contrary to the statements of witnesses and the material available on record, is not found to be correct. In our opinion, the trial Court has marshalled the evidence after

considering each aspect of the matter and it is not a case where the trial Court has recorded its finding contrary to the evidence and even conclusions have rightly been drawn. Thus, we are not persuaded by the argument of the learned Public Prosecutor so as to interfere with the judgment of the trial Court.

In view of the reasons given above, we are not inclined to interfere with the judgment of the trial Court. Hence, the appeal preferred by the State deserves to be dismissed and the same is accordingly dismissed.

(MUNISHWARNATH BHANDARI),J. (BHAGWATI PRASAD),J.

Scd.